

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



NICOLAS SANCHEZ-GARCIA,
#32518-177,

Petitioner,

v.

Action No. 2:18cv532

MARK J. BOLSTER,
Acting Warden,

Respondent.

FINAL ORDER

Nicolas Sanchez-Garcia (“Sanchez-Garcia”) is a federal prisoner convicted in the United States District Court for the Northern District of Texas, and confined in the Federal Correctional Institution in Petersburg, Virginia. ECF No. 5. In his amended petition filed pursuant to 28 U.S.C. § 2241, Sanchez-Garcia claims that he is being denied the ability to participate in prison programs and earn credit toward his sentence. ECF No. 13 at 6–7.

After reviewing Sanchez-Garcia’s inmate account report, the Court determined he has access to sufficient assets to pay a filing fee of \$5.00, and denied his request to proceed *in forma pauperis* on February 4, 2019. ECF No. 12. The Court ordered Sanchez-Garcia to pay the \$5.00 filing fee, request an extension of time in which to pay the fee, or demonstrate that he lacked the ability to pay the fee. *Id.* In response, Sanchez-Garcia filed a statement explaining that he is saving his money for starting over when he is released from prison. ECF No. 14.

On April 10, 2019, the Court entered a show cause Order, offering Sanchez-Garcia another opportunity to pay the filing fee. ECF No. 15. The Order directed Sanchez-Garcia to show cause why the petition should not be dismissed for failure to timely pay the filing fee. *Id.* Sanchez-

Garcia was again ordered to pay the \$5.00 filing fee, request an extension of time in which to pay the fee, or demonstrate that he lacked the ability to pay the fee. *Id.* The Order included a warning that failure to comply with the Order within thirty days would result in the submission of the matter to a United States District Judge for dismissal without prejudice. *Id.* (citing *Evans v. Croom*, 650 F.2d 521 (4th Cir. 1981)). Sanchez-Garcia did not comply with the Order.

The petition was referred to a United States Magistrate Judge for a report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's report and recommendation filed July 24, 2019, recommends dismissal of the petition without prejudice to refiling with the appropriate filing fee. ECF No. 16.

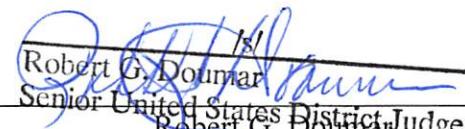
Sanchez-Garcia has not paid the filing fee. In addition, Sanchez-Garcia has not filed objections to the report and recommendation, and the time for filing objections has expired. The Court does hereby accept the findings and recommendations set forth in the report and recommendation, and it is therefore **ORDERED** that the petition be **DISMISSED WITHOUT PREJUDICE** to Sanchez-Garcia refiling with the appropriate filing fee. It is further **ORDERED** that judgment be entered in favor of Respondent.

Finding that the basis for dismissal of Sanchez-Garcia' petition is not debatable, a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Sanchez-Garcia is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit.

Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Sanchez-Garcia intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty days** from the date of this Order. Sanchez-Garcia may seek such a certificate by filing a notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Order to Sanchez-Garcia. A copy of the petition, its related filings and this Dismissal Order shall be served on the respondent and the United States Attorney for the Eastern District of Virginia by CM/ECF pursuant to their Agreement on Acceptance of Service with the Court.



/s/
Robert G. Doumar
Senior United States District Judge
Robert G. Doumar Judge
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
August 20, 2019